



BUSINESS & LABOR

EXHIBIT NO. 4

DATE 1-29-13

BILL NO. HB 63

Statement of:

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Written Testimony Submitted to:

**Committee on Business, Labor and Economic Affairs
Montana State Senate**

Hearing on:

HB 63, Revising the Montana Retail Installment Sales Act

January 29, 2013

Distinguished Members of the Senate Committee on Business, Labor, and Economic Affairs, I thank you for this opportunity to deliver written testimony on behalf of the 330 member institutions of the American Securitization Forum (the “ASF”)¹ as you evaluate House Bill No. 63 (the “Bill”), which amends certain provisions of Title 31, Chapter 1, Part 2 of the Montana Code with respect to the licensing of sales finance companies.

In the testimony that follows, we express our concerns regarding the unintended consequences of this legislation and ask that you VOTE NO on the Bill or amend the Bill to explicitly clarify that certain subsequent purchasers of Montana retail installment contracts will not be required to be licensed as sales finance companies.

The Bill provides that “[a] person may not engage in the business of a sales finance company, including the purchase of retail installment contracts that are entered into in this state, without a license” It is unclear whether this provision will be interpreted to apply not only to the initial purchaser of a retail installment contract from the selling dealer, but also to any subsequent purchaser of that retail installment contract. If these provisions are applied to subsequent purchasers or if it is left unclear as to whether or not subsequent purchasers are required to be licensed, it could result in increased transaction costs that will likely be passed onto Montana consumers and businesses and/or a decreased willingness to purchase Montana retail installment contracts or finance purchases of vehicles in Montana resulting in fewer options and higher borrowing costs for Montana consumers and businesses.

Various vehicle financing techniques are used to make consumer and commercial loans more affordable to the public, including the use of securitization. Securitization generally involves the identification of a pool of contracts, the transferring of that pool through one or more intermediaries to a special purpose entity, and the issuance by that special purpose entity of interests directly or indirectly backed by the pool of contracts. Through securitization, banks and non-banks are able to turn illiquid assets (i.e. auto and commercial motor vehicle retail installment contracts, loans and leases, equipment loans and leases, mortgage loans, credit card receivables, etc.) into securities that can be sold to investors, thereby freeing up funds to allow for additional loan origination and cheaper credit for consumers and businesses.² Absent a sale of retail installment contracts, the holder must wait for payments on those receivables to be received over an extended period of time to create liquidity to finance new loans.

In a typical securitization of motor vehicle retail installment contracts, the retail installment contracts will often be transferred two or more times between various transaction parties in order to aggregate numerous contracts from multiple states into a single entity and to then isolate the

¹ The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

² See Exhibit A attached to the end of this testimony for further discussion of the importance and performance of securitization, as well as potential impacts of increasing regulation.

contracts in the special purpose entity from the aggregating entities. If each of the entities in the chain of title were required to be licensed, the delay, cost and administrative burdens may result in a determination by the entity sponsoring the securitization that it is more cost effective to exclude Montana contracts than to go through the licensing process, especially in circumstances where the transaction is being consummated on a tight timeframe. If Montana retail installment contracts cannot be securitized or resold quickly in the ordinary course of business, they will be less likely to be purchased, increasing costs to Montana consumers and businesses.

By creating the increased administrative burdens, increased costs and delays described above, the Bill will make consumer and commercial credit in Montana more expensive relative to other states and reduce the availability of funds for new loan originations. The net proceeds of a securitization or sale of contracts ultimately flow back to the originator/purchaser and enable the originator/purchaser to originate or purchase more Montana contracts. Unfortunately, these additional costs, delays and burdens would significantly discourage originators and purchasers from entering into or purchasing retail installment contracts related to Montana vehicles and, ultimately, would result in higher costs and fewer financings options in Montana.

We believe that requiring only the initial purchaser of the contract from the selling dealer to be licensed should be sufficient to give Montana the supervisory power it needs, and requiring the licensing of subsequent purchasers does not increase that power, but merely adds costs, delays and burdens to the process, which will result in increased costs to and decreased financing options for Montana consumers and businesses. Therefore, we strongly suggest that the amendments relating to Section 31-1-221 of the Bill be revised (i) to add language to clarify that a purchaser of retail installment contracts need only be licensed if it is purchasing the contracts from a retail seller or (ii) to specifically exclude subsequent purchasers from the sales finance company licensing requirement or, at a minimum, exclude securitization related entities where the initial purchaser, the servicer or another person in the chain of title is so licensed.

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ASF very much appreciates the opportunity to provide the foregoing comments. Should you have any questions, would like suggestions on specific amendment language or desire any clarification concerning the matters addressed in this testimony, please do not hesitate to contact me directly at 212.412.7107 or at tdeutsch@americansecuritization.com.

Exhibit A

The private securitization markets currently supply hundreds of billions of dollars in Main Street credit to the economy each year for, among other things: consumers to buy houses, cars, motorcycles and college educations; farmers to buy tractors and equipment; and businesses to expand their franchises and physical plants. These securitization markets effectively ship mass quantities of long-term saved capital from pension funds, mutual funds, insurance companies and banks into individually tailored loans to Main Street consumers and businesses. Given the historical shift of worldwide savings patterns, the banking sector simply cannot supply enough capital directly to credit seekers. Instead, securitization in its simplest form links up savers with everyday Americans looking to borrow.

Different segments of the asset-backed securities ("ABS") markets have recovered at varying levels since the end of the recent recession, as noted by the Board of Governors of the Federal Reserve System ("FRB") in its October 2010 report on risk retention.³ Although auto loan and lease ABS rebounded to \$59.4 billion in issuance in 2011, this level remains down from the \$79.7 billion in issuance in 2006.⁴ Another area of strong performance has been in equipment ABS, where issuance in 2011 moved up to \$8.6 billion, surpassing the \$8.4 billion of 2006 issuance.⁵

Between 2006 and 2011, credit card ABS issuance dropped 77.1% from \$72.5 billion to \$16.4 billion,⁶ in large part due to banking regulators linking capital requirements directly to accounting consolidation standards under FAS 166 and 167. During those same four years, student loan issuance has fallen nearly 73.4% from \$65.7 billion to \$17.5 billion,⁷ largely due to the federal government elimination of the FFELP program. By comparison, on the residential mortgage-backed security ("RMBS") side, only \$22.2 billion of private-label RMBS were issued in 2011, down 96.9% from the \$723.3 billion issued in 2006.⁸ In addition to the overall reduction of issuance in the RMBS market, we further note that 98% of RMBS were federally-backed in 2011, as compared with only 56% in 2006 when private credit accounted for a much larger share of RMBS issuance.⁹

As an outgrowth of the financial crisis though, many have focused on securitization as an ailing patient that needs heavy doses of regulatory medication to recuperate. However, the aggregate and interactive effect of the myriad regulatory changes at the federal level and in jurisdictions

³ Board of Governors of the Federal Reserve System, "Report to the Congress on Risk Retention" (Oct. 2010), p. 2, available at <http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf>.

⁴ Data are from *Asset Backed Alert*; see also the ASF presentation to the Financial Stability Board of April 10, 2012, available at http://www.americansecuritization.com/uploadedFiles/ASF_FSB_Presentation_4-10-12.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

across the country will result in substantial cost that will ultimately impede securitization and increase the cost of credit for consumers and businesses alike.

The manifestations of these effects include:

1. Straight-forward products like auto and equipment-backed securitizations, whose performance was strong across the board through the entirety of the financial crisis, are now facing extraordinary compliance challenges with a complex web of expansive policy initiatives;
2. Unintended interactions of various rules will continue to be discovered for years, which is causing immense costs in reworking various structures or eliminating products all together. The markets would accept these changes if they were constructive and thought-through, but this is occurring without coordination among the rules or analysis of potential interplay;
3. Market participants aren't investing in building platforms. Rather, they're putting their skeletal platforms in the deep freeze because of the tremendous uncertainty of the outcome of proposed rules that could very well make those business lines loss centers;
4. Non-banks and banks are being subjected to further disparate rules causing competitive advantages and disadvantages to develop that will inevitably cause exiting of business lines based on regulation, rather than on market efficiency or capability; and
5. Although policy initiatives continue to evolve on a country by country, as well as a state by state, basis, the issuance and purchase of securitizations are forced to comply with new and different standards in each jurisdiction.